

The Honorable Edward F. Shea

Paul R. Cressman, Jr.
Russell S. King
SHORT CRESSMAN & BURGESS PLLC
999 Third Avenue, Suite 3000
Seattle, Washington 98104-4088
Telephone: (206) 682-3333
Facsimile: (206) 340-8856

Attorneys for Asia Pacific Environmental Technology, Inc.
and Hawaii Medical Vitrification, Inc.

Bart J. Freedman
Theresa L. Keyes
Preston Gates & Ellis LLP
601 West Riverside Avenue, Suite 1400
Spokane, WA 99201-0628
Telephone: (509) 624-2100
Facsimile: (509) 456-0146

Attorneys for Integrated Environmental Technologies, LLC

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ASIA PACIFIC ENVIRONMENTAL TECHNOLOGY, INC., a Hawaii corporation; and HAWAII MEDICAL VITRIFICATION, INC., a Hawaii corporation,

NO. CV-05-5077-EFS

INTEGRATED ENVIRONMENTAL TECHNOLOGIES, LLC, a New York Limited Liability Corporation; and DOE DEFENDANTS 1-50.

**STIPULATED PROTECTIVE
ORDER**

Defendants.

STIPULATED PROTECTIVE ORDER - 1

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SHORT CRESSMAN & BURGESS PLLC
999 THIRD AVENUE, SUITE 3000
SEATTLE, WASHINGTON 98104-4088
(206) 682-3333

STIPULATION

The parties to this action (collectively the "Parties" or individually "Party"), through their undersigned counsel of record agree that it would serve their respective interests to conduct discovery under a protective order to avoid disputes during the discovery process.

Therefore, to effectuate their agreement, the Parties stipulate to the following:

1. When used in this Stipulated Protective Order, "Information" means all documents or other materials or media produced in response to discovery requests or otherwise conveyed during this litigation.

2. The Parties agree that, pursuant to this Stipulated Protective Order, any Party or third party who produces Information in this litigation may designate any Information as “Confidential” if they have a good faith belief that the Information is or contains trade secrets or other confidential, proprietary, financial, or commercially-sensitive information.

3. The Parties agree that, pursuant to this Stipulated Protective Order, any Party or third party who provides Information which is produced by that Party or third party in this litigation may designate any Information as "Attorneys Eyes Only" if they have a good faith belief that the Information is or contains trade secrets or other confidential, proprietary, financial, or commercially-sensitive information the disclosure of which to the requesting Party could result in financial harm to the producing Party.

4. The Parties agree that, except with the prior written consent of the producing party, the attorneys and Parties herein shall use any Information or deposition testimony designated by any party as "Confidential" only for purposes

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1 of this action, and shall not disclose such Confidential Information, except as
 2 otherwise provided herein, to any person other than:

- 3 a. The Court and any persons employed by the Court whose duties
 4 require access to any materials filed in connection with this action;
- 5 b. Legal counsel for any Party in this action, their legal associates,
 6 paralegals, clerical and other support staff assisting in the representation of
 7 the Party to this action;
- 8 c. The Parties to this litigation, their employees, officers and
 9 directors whose duties require access to Information exchanged through
 10 discovery in this action;
- 11 d. Actual witnesses and potential witnesses in this action, and
 12 their counsel, to the extent reasonably deemed necessary by counsel for the
 13 witness's preparation for testimony;
- 14 e. Outside consultants and experts (and their employees) retained
 15 for the purpose of assisting in the prosecution and/or defense of this action;
- 16 f. Court reporters;
- 17 g. Mediators and / or Arbitrators that the Parties have agreed to
 18 use in an effort to resolve or narrow the issues in this case; and
- 19 h. Employees of copying and/or microfilming services utilized
 20 with respect to this action for the prosecution or defense thereof.

21 5. Prior to disclosure of any Information designated as "Confidential,"
 22 any person included under subsections 4(d) and (e) shall agree in writing to comply
 23 with this Order by executing a Certificate of Knowledge of and Compliance with
 24 Stipulated Protective Order indicating that he or she has received and reviewed this
 25 Stipulated Protective Order and agrees to be bound by its terms. The Certificate
 26 shall be in the form attached as Exhibit A. If such person refuses to be bound by

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1 the terms of the Stipulated Protective Order, no Confidential Information may be
 2 shown to that person outside the context of a sworn deposition. Deponents who
 3 refuse to agree to the terms of this Stipulated Protective Order on the record may
 4 be shown Confidential Information during the course of a deposition, but will not
 5 be allowed to keep a copy of the Confidential Information or the transcript of the
 6 deposition if the transcript recites, references, or describes the contents of the
 7 Confidential Information.

8 6. Information designated as "Attorneys Eyes Only" shall be treated in
 9 the same manner as Information designated as "Confidential" with the additional
 10 restriction that Information designated as "Attorneys Eyes Only" shall not be
 11 disclosed to any person included under subsection 4(c) without the prior written
 12 consent of the producing Party.

13 7. Whenever a deposition taken on behalf of any Party involves the
 14 disclosure of "Confidential" or "Attorneys Eyes Only" Information of either Party,
 15 either Party may designate all or portions of said deposition as containing
 16 "Confidential" or "Attorneys Eyes Only" Information. Any such designation, and
 17 the Information so designated, shall be made subject to the provisions of this
 18 Stipulated Protective Order.

19 8. Any Party may challenge the designation of Information as
 20 "Confidential" or "Attorneys Eyes Only" by giving written notice that such Party
 21 intends to challenge the designation by raising the issue with the Court. Notice
 22 must be made to the Party who produced the Information not less than fourteen
 23 (14) days prior to filing any motion. If, within ten (10) days after receipt of the
 24 notice, the Party who produced the Information makes a written objection to the
 25 Party giving the notice, the Information shall remain designated as "Confidential"
 26 or "Attorneys Eyes Only" until this Court orders otherwise. If timely written

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1 objection is not made, the Party who produced the Information shall be deemed to
 2 have waived any objection to the disclosure of the designated Information and the
 3 Information may be treated as non-confidential without further order of the Court.

4 9. With respect to any communications to the Court, including any
 5 pleadings, motions or other papers, all documents containing "Confidential" or
 6 "Attorneys Eyes Only" Information shall be communicated to the Court in a sealed
 7 envelope or other appropriate sealed container on which shall be written the
 8 caption of this lawsuit, an indication of the contents of the sealed envelope or
 9 container, and the words "CONFIDENTIAL INFORMATION SUBJECT TO A
 10 PROTECTIVE ORDER," and the Clerk of this Court is directed to maintain such
 11 materials under seal.

12 10. Inadvertent failure to designate any Information "Confidential" or
 13 "Attorneys Eyes Only" shall not constitute a waiver of an otherwise valid claim of
 14 confidentiality pursuant to this Stipulated Protective Order, so long as a claim of
 15 confidentiality is asserted within fifteen days after the producing Party has noticed
 16 the inadvertent failure to designate the Information as "Confidential" or "Attorneys
 17 Eyes Only." At such time, arrangements shall be made by the Parties to designate
 18 the Information "Confidential" or "Attorneys Eyes Only" in accordance with this
 19 Stipulated Protective Order.

20 11. Except as otherwise agreed in writing, at the conclusion of this action,
 21 whether the action be settled, otherwise resolved in full prior to trial, or tried on the
 22 merits, the obligations imposed by this Stipulated Protective Order shall remain in
 23 effect. All copies of "Confidential" or "Attorneys Eyes Only" Information shall be
 24 promptly returned to the producing Party upon request, or destroyed by agreement
 25 of the Parties.

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STIPULATED PROTECTIVE ORDER - 5

1 12. Any person or entity receiving "Confidential" or "Attorneys Eyes
 2 Only" Information under this Stipulated Protective Order who is then later served
 3 with a subpoena for any such Information shall give counsel for the Parties at least
 4 seven (7) days' notice (or reasonable notice if the time for compliance with the
 5 subpoena is less than seven (7) days) before producing any such Information.

6 13. Each person or entity to whom "Confidential" or "Attorneys Eyes
 7 Only" Information is disclosed in accordance with provisions of this Stipulated
 8 Protective Order hereby submits himself, herself, or itself to the jurisdiction of this
 9 Court for the enforcement of this Stipulated Protective Order.

10 14. The terms of this Stipulated Protective Order shall survive any
 11 settlement, discontinuance, dismissal, severance, judgment, or other disposition of
 12 this litigation, and the Court shall continue to retain jurisdiction to enforce the
 13 terms of this Stipulated Protective Order.

14 The Parties, through their undersigned counsel of record, hereby stipulate
 15 and agree to entry of this Stipulated Protective Order.

16 DATED this 11th day of August, 2005

17 PRESTON GATES & ELLIS

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 19 s/ Theresa L. Keyes
 20 Bart J. Freedman, WSBA No. 14187
 bartf@prestongates.com
 21 Theresa L. Keyes, WSBA No. 24973
 theresak@prestongates.com
 22 Attorneys for Defendant, Integrated
 Environmental Technologies, LLC

17 SHORT CRESSMAN & BURGESS

18
 19 s/ Russell S. King
 20 Paul R. Cressman, Jr., WSBA No. 7128
 pcressman@scblaw.com
 21 Russell S. King, WSBA No. 27815
 rking@scblaw.com
 22 Attorneys for Plaintiffs, Asia Pacific
 Environmental Technology, Inc., and
 Hawaii Medical Vitrification, Inc.

ORDER

IT IS SO ORDERED. The Stipulated Motion for Protected Order [23] is GRANTED.

DATED: August 15, 2005.

s/ Edward F. Shea

Honorable Edward F. Shea
United States District Judge

STIPULATED PROTECTIVE ORDER - 7

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1 CERTIFICATE OF SERVICE

2 I hereby certify that on August 11, 2005, I electronically filed the foregoing
3 with the Clerk of the Court using the CM/ECF System which will send notification
4 of such filing to the following:

5 Paul R. Cressman, Jr. pcressman@scblaw.com;
6 Russell S. King: rking@scblaw.com

7 s/ Theresa L. Keyes
8 Theresa L. Keyes
9 theresak@prestongates.com
10 Attorneys for Plaintiff
11 PRESTON GATES & ELLIS LLP
12 601 West Riverside Avenue,
Suite 1400
Spokane, WA 99201-0628
Telephone: (509) 624-2100
Facsimile: (509) 456-0146

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27 SHORT CRESSMAN & BURGESS PLLC
28 999 THIRD AVENUE, SUITE 3000
29 SEATTLE, WASHINGTON 98104-4088
30 (206) 682-3333

31 STIPULATED PROTECTIVE ORDER - 8

EXHIBIT A**Certification of Knowledge of and Compliance with Stipulated Protective Order**

I certify my understanding that confidential discovery materials and the information contained therein will be provided to me pursuant to the terms and restrictions of the Stipulated Protective Order issued in the action titled ASIA PACIFIC ENVIRONMENTAL TECHNOLOGY, INC. and HAWAII MEDICAL VITRIFICATION, INC. v. INTEGRATED ENVIRONMENTAL TECHNOLOGIES, LLC, NO. CV-05-5077-EFS (U.S. District Court for the Eastern District of Washington), and that I have been given a copy of and have read the Stipulated Protective Order and agree to be bound by it. I understand that such discovery materials, any copies, any notes or other memoranda, or any other forms of information regarding or derived from those materials, including the contents of those documents, shall not be disclosed to any person, except as permitted under the Stipulated Protective Order, shall be used only for the purpose of said proceedings, and shall be returned, if they are confidential pursuant to the Stipulated Protective Order. I understand that I may not use or disclose any confidential information subject to this Stipulated Protective Order for any reason outside of the above-referenced lawsuit.

DATED: _____ (Signature)

Print Name _____